

National Government Services Purchase Order Terms and Conditions

- 1. Terms and Acceptance.** This order becomes binding if: (1) seller's signed acknowledgment is received by National Government Services, Inc. ("NGS" or "Buyer"), or (2) seller ships all or any portion of the goods covered by this order according to an agreed upon schedule, if any; or (3) Buyer gives seller written approval of the price and delivery schedule of the goods as stated by seller if seller's written acknowledgment of this order contains either: (a) a different price or delivery schedule or a different type of item, or (b) no price or no delivery schedule for the item or items which requires Buyer's approval. Except as provided in the preceding sentence, it is a condition of this order that any provision printed or otherwise contained in any acknowledgment hereof, inconsistent with or in addition to the terms and condition herein stated, and any alteration in this purchase order, shall have no force or effect, and that seller by such acknowledgment thereby agrees that any such provisions therein or any such alterations in this order shall not constitute any part of this contract of purchase and sale. This contract contains the entire agreement of the parties, and failure of purchaser to enforce any of its rights hereunder shall not constitute a waiver of such rights or of any other rights hereunder.
- 2. Inspection and Acceptance.** All items and installed work are subject to the inspection and acceptance of an authorized representative of NGS. Goods delivered (whether paid for or not) are subject to inspection, testing, and approval by Buyer before acceptance. Seller expressly warrants that all articles, materials, and work will conform to the applicable drawings, specifications, samples, or other descriptions given in all respects, and that the goods delivered hereunder will be of good quality, material, and workmanship, merchantable and free from defects. This warranty shall survive any inspection, delivery, acceptance, and/or payment by Buyer of the goods or services. Nonconforming goods, all goods not fully up to standard and not in compliance with the specifications hereof, or shipped contrary to instructions, or in excess of the quantities herein provided, or substituted for goods described, or not shipped in containers conforming to Buyer's specifications (or, in the absence of such specifications, in recognized standard containers), or allegedly violating any statute, ordinance, or administrative order, rule, or regulation, may be rejected by Buyer and returned or held at seller's expense and risk. Buyer may charge to seller all expense of inspecting, unpacking, examining, repackaging, storing, and reshipping any goods rejected as aforesaid. The remedies herein above afforded to Buyer shall not be exclusive, but Buyer may hold seller liable for any and all damages arising from any breach or default hereinabove set forth.

3. **Invoices.** Invoices must be rendered to:

National Government Services, Inc.
Attention: Accounts Payable
6775 West Washington Street, Summit Place
Milwaukee, Wisconsin 53214

All invoices must include an attached bill of lading or express receipt where applicable. Freight charges must be supported by copy of original freight bill. All invoices submitted without a valid purchase order number/blanket purchase order release record will be returned to seller. Packaging: each package shall be numbered and labeled with Buyer's order number, stock number, contents, and weight, shall contain an itemized packing slip and shall be properly prepaid for shipment so as to secure lowest transportation and insurance rates and to meet carrier's requirements unless otherwise specified. No charges will be allowed seller for packing, breakage, freight, express, or cartage unless stated herein. Seller acknowledges that NGS is a federal contractor and that all funding for this agreement is dependant upon NGS's receipt of adequate funding from the federal government. In order to help ensure that adequate government funding is available, seller agrees to submit all claims for payment within 90 days of the date the claim is incurred or within 90 days after this agreement is terminated – whichever is earlier. Seller recognizes and agrees that any claims submitted more than 90 days after this agreement is terminated will be payable only to the extent adequate funding is received from the federal government. Seller hereby waives any and all rights and/or causes of action against NGS with respect to any claims for payment submitted more than 90 days after the termination of this agreement.

4. **Conflicting Terms.** If terms on this order do not appear on or agree with sellers invoice as rendered, seller agrees that the terms of this invoice shall prevail and Buyer may make payment accordingly.
5. **Deliveries.** Delivery must be made within the time agreed upon in seller's quotation or as stated in this order if different. As time is of the essence, on failure of the seller to meet stated delivery date, Buyer in Buyer's sole discretion reserves the right to (1) purchase elsewhere and charge the seller with the difference in cost resulting there from, or (2) the Buyer may cancel this order. All deliveries are to be considered to be "Inside Deliveries" unless specified otherwise. All deliveries will be billed as shipped and all correspondence, proofs, invoices and packages must contain the purchase order number. Buyer reserves the right to refuse deliveries not identified by a correct order number. The specific quantity ordered must be delivered in full and not be changed without Buyer's consent in writing. Any unauthorized quantity is subject to our rejection and return at seller's expense. With respect to orders for printed material, a tolerance of 10 percent over 5 percent under will be accepted unless otherwise specified on the face of the order. Cash discount periods will date from the receipt of goods, or from the date of the invoice, whichever is later. C.O.D. shipments will not be accepted.

6. **Pricing.** Prices recorded in this order are not subject to increase. If prices of the goods or services covered by this order are reduced (whether in the form of a price reduction, close-out, rebate, allowances, or additional discounts offered to anyone) on or before the time of any shipment, seller agrees that the price to Buyer for such goods will be reduced accordingly and that Buyer will be billed at such reduced prices. If price is not recorded on the face of this order, price shall be that of the previous order given by Buyer to seller, subject to the provisions of this paragraph. If, price includes taxes or excises, and if such taxes or excises or any part thereof are hereafter refunded to seller, seller shall immediately pay Buyer the amount of such refund. Seller certifies that the prices herein are not higher than prices being charged to other organizations purchasing identical goods in smaller quantities at this time.
7. **Pricing Warranty.** The price herein specified is warranted against any decline that may be made by other sellers of goods covered by this order. If at any time during the term of this agreement, a price shall be offered by such competing seller which is lower than the seller may agree to, the seller shall notify the Buyer forthwith and allow the Buyer to buy a three month's supply of the goods elsewhere and such quantity shall be deducted from the unshipped portion due the Buyer under the terms of this agreement
8. **Indemnification.** seller will indemnify and save harmless the Buyer against any and all losses, including but not limited to (1) expense and legal liability for damages resulting from any injury to person, or property or from death, caused by the delivery of merchandise, service being performed on-site or the installation of any work called for in this order; (2) or to Buyer's increased production costs and lost profits, damages, liabilities, claims and suits at law or in equity, which may be brought against or suffered by Buyer arising directly or indirectly out of any actions or omissions as a result of negligence or misconduct of any officer, agent or employee of seller including (a) deliveries not made within the time agreed upon in seller's quotation or as stated in this order if different, (b) any defective material workmanship or design in the items or materials supplied hereunder including the performance of services as set forth hereunder or in any other, provision of this order.
9. **Default.** Upon the happening of any one or more of the following events, Buyer shall forthwith have the unrestricted right to cancel and terminate the contract without cost or liability. to the Buyer (1) seller's insolvency or inability to meet obligations as they become due; (2) filing of voluntary or involuntary petition of bankruptcy by or against seller; (3) institution or legal proceedings against seller by creditors or stockholders; (4) appointment of a receiver for seller by any court of competent jurisdiction. The acceptance of goods or performance after the occurrence of any of the events above enumerated shall not affect the right of the Buyer to cancel its additional obligations. Buyer reserves the right at any time and from time to time without cause, to cancel all or any part of the undelivered portion of this order by notice to seller. In the event of such cancellation, Buyer shall not be liable to seller for loss of anticipatory profits. The provisions of this paragraph shall not limit or affect. Buyer's right to terminate this purchase order for default of seller.

10. **Notices.** All notices required by this order by overnight courier for delivery on the next business day are to be directed to:

National Government Services, Inc.
400 South Salina Street
Syracuse, New York 13202-2416
Attention: Purchasing Administration or Contracts Administration

11. **Title to Drawings, Specifications, Copyright Information, and Confidentiality.** Buyer shall at all times have all title right and interest to all drawings, specifications, and information furnished by Buyer to seller and intended for use in connection with this order. This includes the development of new proprietary and trade secrets, including but not limited to, concepts, methods, techniques, processes, adaptations and ideas. Such drawings, specifications and information shall be deemed proprietary to Buyer and seller shall maintain the confidential nature of such matters to the extent that it protects its own proprietary information. Seller further agrees that the cost of composition, artwork, negatives and plates is included in the price stated herein. Seller shall use such drawings, specifications and information only in connection with this order, and shall not disclose such drawings, specifications or information to any person, firm or corporation other than seller's employees, subcontractors or government inspectors, on a need to know basis without the written express consent of the Buyer. To the extent seller is a business associate of Buyer, as that term is defined in 45 *Code of Federal Regulations* (CFR) Parts 160–164 (the HIPAA Privacy Regulations), seller agrees to execute the business associate addendum that is attached and made a part hereof.

12. **Modification.** Buyer shall have the right to make, from time to time and without notice to any sureties or assignees, changes as to packing, testing, destination, specification, designs, and delivery schedule. Seller shall immediately notify Buyer of any increases or decreases in costs caused by such changes and an equitable adjustment of prices or other terms hereof shall be agreed upon in a written amendment to this order.

13. **Waiver of Liens.** Seller hereby waives and relinquishes all liens and claims statutory or otherwise which seller now has or may hereafter have as a result of labor done and materials furnished by seller or Buyer in performance of the within order.

14. **Trade Name.** Unless authorized by Buyer in writing, Buyer's name, trade name, or the name or trade name of any of Buyer's subsidiaries or affiliates of the Blue Cross and Blue Shield Association, shall not be used in seller's advertising.

15. **Remedies.** Shall be cumulative and remedies specified herein do not exclude any remedies allowed by law. Waiver of any breach shall not constitute waiver of any other breach of the same or any other provision. Acceptance of any item or service, shall not waive any breach.

16. **Governing Law.** This contract shall be governed and construed under the laws of New York and any lawsuits brought hereunder shall be brought and tried in a court of competent jurisdiction in the state and county of New York, New York.
17. **Assignment.** This contract may not be assigned by seller without Buyer's written consent and any attempt to do so shall be null and void. Buyer may assign this order to its parent, subsidiaries and its affiliates or to any successor of the Buyer's by merger, acquisition or purchase of substantially all its assets without prior notification to seller.
18. **Rights.** The Rights of Buyer listed herein shall in no way limit rights of Buyer under applicable law.
19. **Cancellation.** Buyer reserves the right at anytime without cause, to cancel all or any part of the undelivered portion of this order by notice to seller. In the event of such cancellation, Buyer shall not be liable to seller for loss of anticipatory profits. The provisions of this paragraph shall not limit or affect Buyer's right to terminate this purchase order for default of seller.
20. **Compliance with Laws.** Seller warrants and represents that it complies with all applicable federal, state and local laws, rules and regulations or ordinances and agrees to indemnify Buyer against any loss or damage (including but not limited to court expenses and reasonable attorneys' fees) resulting from the violation of any such laws or regulations. With respect to goods or services that are the subject of this order, such warranty includes, but is not limited to the Civil Rights Act of 1964 (Title VII), E.O. 11246, as amended, E.O. 11375, the Americans with Disabilities Act of 1990, Pub. L. No. 101-336, 104 Stat. 327, 42 U.S.C. Sections 12101 at seq., 48 CFR 52.222-26 (Equal Opportunity), 48 CFR 52.222-35 (Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era), 48 CFR 52.222-36 (Affirmative Action for Workers with Disabilities), and New York City Executive Order 50.
21. **Commercial Items or Services.** FAR 52.244-6 Subcontracts for Commercial Items.
- (a) Definitions. As used in this clause—
- "Commercial item" has the meaning contained in Federal Acquisition Regulation 2.101, Definitions.
- "Subcontract" includes a transfer of commercial items between divisions, subsidiaries, or affiliates of the contractor or subcontractor at any tier.
- (b) To the maximum extent practicable, the contractor shall incorporate, and require its subcontractors at all tiers to incorporate, commercial items or nondevelopmental items as components of items to be supplied under this contract.
- (c) (1) The following provisions are hereby incorporated by reference and the contractor shall insert them in any subcontracts for commercial items:
- (i) 52.219-8, Utilization of Small Business Concerns (May 2004) (15 U.S.C. 637[d][2] and [3]), in all subcontracts that offer further subcontracting

opportunities. If the subcontract (except subcontracts to small business concerns) exceeds \$500,000 (\$1,000,000 for construction of any public facility), the subcontractor must include 52.219-8 in lower tier subcontracts that offer subcontracting opportunities.

- (ii) 52.222-26, Equal Opportunity (Apr 2002) (E.O. 11246).
- (iii) 52.222-35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (Dec 2001) (38 U.S.C. 4212(a));
- (iv) 52.222-36, Affirmative Action for Workers with Disabilities (June 1998) (29 U.S.C. 793).
- (v) 52.222-39, Notification of Employee Rights Concerning Payment of Union Dues or Fees (Dec 2004) (E.O. 13201). Flow down as required in accordance with paragraph (g) of FAR clause 52.222-39).
- (vi) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (Feb 2006) (46 U.S.C. App. 1241 and 10 U.S.C. 2631) (flow down required in accordance with paragraph (d) of FAR clause 52.247-64).

(2) While not required, the contractor may flow down to subcontracts for commercial items a minimal number of additional clauses necessary to satisfy its contractual obligations.

(d) The contractor shall include the terms of this clause, including this paragraph (d), in subcontracts awarded under this contract.